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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 549

L. J. LAWRENCE, GUARDIAN OF HARRY NEWSOME, INCOMPETENT VETERAN,

Petitioner,

vs.

JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, ET AL.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA AND BRIEF IN SUPPORT THEREOF.

JOHN E. BENTON,
LLOYD J. LAWRENCE,
Counsel for Petitioner.

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JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. SYKES, J. M. ELEY AND T. W. SEARS, CONSTITUTING AND COMPOSING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY, AND JOHN A. NORTHCOTT, COUNTY ACCOUNTANT OF SAID HERTFORD COUNTY.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

To the Honorable the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, L. J. Lawrence, guardian of aforesaid incompetent veteran, prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina, in the above entitled action, which became final September 1, 1936, *on the specific question left open by*

this honorable court in the case of Trotter v. *Tennessee*, 290 U. S. 354, 78 L. Ed. 358.

In support thereof, petitioner respectfully represents to this Honorable Court that petitioner is and was at all times since the year 1929, the duly appointed and qualified guardian of Harry Newsome, an incompetent veteran of the World War, acting under due authority from the Superior Court of Hertford County, North Carolina, and governed by the rights and duties arising under the laws of said State, and the Acts of Congress, in particular Section 454, Title 38 U. S. C., 43 Stat. 613, and sections 3 and 5, Public No. 262, 74 Congress (Act of August 12, 1935) 1935 Supplement to Title 38 U. S. C. A. (49 Stat. 607).

Action in the State Courts.

On or about the 1st day of October, 1935, the County Accountant of Hertford County, North Carolina, acting for and on behalf of the Board of Commissioners of said Hertford County, upon admissions made to him by petitioner that the amounts then exhibited to petitioner as his deposits in banks and as the value of notes held by him, secured by loans on real estate security, for the years 1931, 1932, 1933, 1934 and 1935, were the correct amounts of such deposits and loans at such times, in the absence of petitioner, without his consent, and without notice to show cause, if any he had, why the said property should not be valued and assessed as taxable property of the said veteran, all moneys received by the petitioner as compensation and insurance from the United States government which were on deposit in banks in each of said years to the credit of said guardian, and held by him intact in an ordinary checking account, and further set up, listed and assessed as taxable property of the veteran aforesaid, all notes possessed by said guardian during each of said years, as temporary loans secured by real estate.

On or about the 3rd of October, 1935, the said County Accountant, without having at any time theretofore given the petitioner notice, and without affording him an opportunity to be heard upon either the values or the validity of such taxes, rendered to petitioner a statement, in writing, showing as assessment of $256.89 taxes on his deposits in banks, and the sum of $1,218.36 taxes on said real estate loans, and demanded of said guardian the payment thereof.

On October 9, 1935, pursuant to said written demands, the petitioner, though protesting, in writing, the payments of said taxes, paid the same in full, and obtained from said County Accountant a written receipt, showing both the payments and protest thereof.

In due time, petitioner made demands on the defendants for refund and return to him of the said $1,475.19, on the ground that said assets being derived from payments of compensation and insurance by the Federal Government were exempt from taxation by virtue of the Federal Statutes, Section 454, Title 38 U. S. C., as amended, and upon the refusal of defendants to refund or return any part thereof, on the 17th day of February, 1936, *in a case* agreed, petitioner and defendants submitted the facts, upon which their controversy depended, to the Superior Court of Hertford County. Judgment for the defendants was rendered in the Superior Court April 4, 1936, and an appeal was thereupon made by petitioner to the Supreme Court of North Carolina.

On June 30, 1936, the said Supreme Court filed an opinion in said controversy without action, affirming the judgment of the said Superior Court. Thereafter, on August 19, 1936, within 40 days, the time allowed under the rules of said court and the consolidated statutes of said State, petitioner filed in the Supreme Court of North Carolina, a

petition to rehear the said controversy, which petition on September 1, 1936, was denied by said Court.

The effect of which denial is that the judgment of the Supreme Court of North Carolina, the highest court in said State having jurisdiction of said controversy, became final on September 1, 1936.

This petition for a writ of certiorari is filed within three months of the time when said judgment became final and there is presented herewith a certified copy of the entire record and proceedings including those in the Supreme Court of North Carolina and the petition to rehear.

This petition for a writ of certiorari is filed under the provisions of Title 28 U. S. Code, Section 344, Paragraph (b), Sec. 237 Judicial Code, as amended.

Summary and Brief Statement of the Matters Involved.

Question Presented.

The question presented here is the specific question left open by this court in its decision in the case of *Trotter* v. *Tennessee, supra,* wherein it was stated: "The moneys payable to this soldier were unquestionably exempt till they came into his hands or the hands of his guardian. * * * *We leave the question open whether the exemption remained in force while they continued in those hands or on deposit in a bank.* * * * We think it very clear that there was an end to the exemption when they lost the quality of moneys and were converted into land and buildings." (Emphasis supplied.)

In this case the moneys on deposit in checking account in the bank were placed there by depositing Government checks in payment of compensation and insurance, and from the same source came the moneys invested in the notes, thereby presenting squarely the question reserved as to moneys in the hands of a guardian of an incompetent veteran. Your

petitioner insists that such funds are exempt from taxation by virtue of the Federal statutes cited *supra*.

Facts and Statutes Involved.

While the amount in controversy is small, the matters at issue are of much importance, since the determination of the issues arising enter into and affect a proper administration from year to year of the trust committed to petitioner, and likewise affects numerous other trusts of a similar character, involving the same issues. A determination of these issues is essential in order that petitioner, and those similarly affected may discharge the duties of such trusts according to the laws of their respective States, and according to the Acts of Congress.

Thus, the judgment complained of would deprive such insane veteran of a right, privilege or immunity granted him by the Federal statutes.

Facts From Which Controversy Arises.

Petitioner qualified as guardian of said incompetent in 1929, and in the year 1930 listed for taxation in said Hertford County the total property of his ward, which list set up and contained moneys in banks, notes secured by conveyance of real estate, and all solvent credits, comprising the total property of his ward, and aggregating $20,380.92. Taxes thereon were levied by the defendant Board of Commissioners, and the same were in due course paid by said guardian.

Thereafter, in the year 1931, petitioner having been informed of a ruling of the Attorney General of North Carolina, that all of such property of a World War veteran was exempt from taxation, appeared before the defendant Board of Commissioners and asked a refund of the total

taxes paid. An order was made by the Commissioners directing refund of the whole of such taxes, and a refund to petitioner was thereafter made (R. 5).

Subsequent to such order, no listing of such property was made by petitioner, but in the year 1935, in consequence of the decisions of *Trotter* v. *Tennessee,* 290 U. S. 354, 78 L. Ed. 358, and *Martin* v. *Guilford County,* 201 N. C. 63, 158 S. E. 847, 76 L. R. A. 978, the defendant Board of Commissioners, acting by and through the County Accountant and the clerk of said Board, having obtained from petitioner, in a private conversation, an admission of the values of moneys in bank and of notes secured by real estate conveyances, belonging to and owned by petitioner as guardian of said veteran, as of April 1st, 1931, 1932, 1933, 1934 and 1935, in the absence of petitioner, without his knowledge or consent, and without notice, proceeded to assess the same for taxation; and on or about the 3rd day of October, 1935, rendered to petitioner a written statement of the value of said property so assessed, and a demand for payment of $1,475.19, the amount of taxes levied thereon (R. 6).

On October 9, 1935, pursuant to these demands, petitioner protested, in writing, the said assessment and levy, and paid under protest the amount of said levy. Immediately thereafter, petitioner made demands on said defendants for a refund of said taxes, which demand was refused, and upon such refusal, and no part having been refunded, a submission of the controversy, without action, was made to the Superior Court of Hertford County, North Carolina, on February 17, 1936 as provided by the 1935 Code, N. C. Art. 25, Secs. 626-8 (see *McKethan* v. *Ray,* 71 N. C. 165), *i. e.,* a judgment was sought on an agreed case stated. Judgment was rendered therein on April 4, 1936 (R. 12). From which petitioner appealed to the Supreme Court of North Carolina.

On June 30, 1936, said Supreme Court filed an opinion affirming the judgment of said Superior Court (R. 13).

On August 10, 1936, and in apt time, petitioner filed in said Supreme Court a petition to rehear the said controversy (R. 25) which petition was denied by said Court on September 1, 1936 (R. 25).

Petitioner's Contention as to Right of Recovery, and Basis of Exemption Claimed.

The ground upon which petitioner bases his claimed right of recovery of the taxes paid is the exemption contained in the Federal Statute. Section 454, Title 38 U. S. C., Sec. 22 World War Veterans' Act 43 Stat. 613 provided: "that the compensation, insurance * * * payable under Title II, III and IV, respectively * * * shall be exempt from all taxation." (This section is printed in full at p. 22.) The language of this statute was construed by this Court with reference to taxation of real estate, purchased by a guardian out of the proceeds of payments of compensation and insurance, in the case of *Trotter* v. *Tennessee*, *supra*, wherein it was held that the exemption does not extend to "permanent investments or the fruits of business enterprises". There was not involved, and the court did not decide, but specifically reserved the question raised in the instant case.

Said Section 22 (Sec. 454, Title 38 U. S. C.) was amended by the Act of August 12, 1935, Public No. 262, 74th Congress, 49 Stat. 607, to read as follows (in part): "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating "to veterans *shall be exempt from taxation*, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy or seizure by or

under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws *nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments''.* (Emphasis supplied.)

Section 5 of the same act is as follows:

> ''That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein.''

(Sections 3 and 5 are printed in full at pages 22-23.)

It will be noted that Section 454, *supra,* was in effect during all the years for which the tax was assessed, but that at the time the action was initiated by the Taxing Authorities, October, 1935, said section had been repealed and superseded by Section 3, Public No. 262, *supra,* which latter law is by Section 5, Public No. 262, *supra,* made applicable prospectively to all payments made prior, or subsequent to, the effective date thereof.

It is the position of petitioner that the funds are exempt under said Statutes and that the Supreme Court of North Carolina erred in deciding adversely to such contention.

Jurisdiction.

This Court has jurisdiction, as provided in Title 28 U. S. C., Sec. 344 Par. (b) to review, by Certiorari, the action of the court below which erroneously construed the Federal Statute and thereby deprived petitioner's ward of a property right, privilege or immunity arising under said Federal Statute and which was appropriately claimed on his behalf.

Assignments of Error.

The Supreme Court of North Carolina erred in holding that:

1. Compensation and insurance funds, paid to World War Veteran or his guardian and deposited by him in a bank, drawing no interest, and payable, without restriction, as the depositor should draw checks against such accounts, are taxable solvent credits despite Section 454, Title 38 U. S. C. as amended.

2. The Act of Congress, approved August 12, 1935, being Public No. 262, 74th Congress (H. R. 3979) 49 Stat. 607, has no application to the facts in the instant case.

3. Petitioner was not entitled to recover any part of said taxes, in the instant action.

Reasons for Allowance of the Writ.

Petitioner respectfully represents that the Writ of Certiorari should issue, because

1. The Supreme Court of North Carolina, in reaching its conclusions, erroneously decided certain Federal questions adversely to petitioner's contentions, and, it is believed, contrary to the purpose and intent of Congress, and the decisions of this Court;

2. A proper construction of the Federal statutes mentioned, involves a large number of veterans, or other beneficiaries, or their guardians, their respective rights and interests, and, in the case of a beneficiary under guardianship, a proper administration of trust funds;

3. The decision and opinion of the North Carolina Supreme Court operates a denial to petitioner of a right, privilege or immunity granted by Federal law.

The Federal questions erroneously decided by the Supreme Court of North Carolina were:

First. That compensation and insurance funds paid to a veteran, or his guardian, and deposited by him in bank, payable, without interest, as such depositor should draw checks thereon, are taxable solvent credits despite Section 454, Title 38 U. S. C.

Second. That the Act of Congress, approved August 12, 1935, or Public No. 262, 74th Congress (H. R. 3979) 49 Stat. 607, has no application to the instant case, although it is expressly provided by this Act that it should apply from the date of its approval to payments made theretofore under any of the Acts therein.

Petitioner insists that:

(a) The Congress of the United States has the right and power to create tax exemptions and immunities and did enact legislation to this effect, Section 454, Title 38 U. S. C. (43 Stat. 613).

(b) The said Section 454 made these funds exempt from taxation in the hands of a guardian when uninvested in permanent taxable property, and that a deposit in a bank for temporary safe-keeping is not an investment within the contemplation of this Court's decision in *Trotter* v. *Tennessee,* nor within the intent and scope of Section 3, Public No. 262, 74th Congress (49 Stat. 607).

(c) The Act of Congress, approved August 12, 1935, or Public No. 262, 74th Congress, was a valid exercise of the powers conferred, extending to and prospectively operating upon all deposits of compensation and insurance funds paid to and deposited by petitioner in bank, whether paid prior or subsequent to the passage of such Act.

(d) The said Act of 1935, is applicable to the facts in this case.

(e) The effect of such Act is to create tax exemption of the money in bank deposited by petitioner as compensation and insurance payments, on which the levy was made by defendants, and taxes exacted.

Attached hereto is the brief of petitioner in support of his petition for said writ of certiorari, to which reference is respectfully made for the authorities in support of this petition.

WHEREFORE, your petitioner respectfully requests that this Court issue a writ of certiorari to the Supreme Court of North Carolina (at Raleigh), to certify and send to this Court a full and complete transcript of the record herein, to the end that the case may be reviewed and determined by this Court as provided by law, and that the decision in said case by the North Carolina Supreme Court may be reversed, and for such other and further relief as may be appropriate and granted in the premises, and your petitioner will ever so pray.

JOHN E. BENTON,
LLOYD J. LAWRENCE,
Attorneys for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936.

No. 549

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JOHN A. SHAW, W. C. FERGUSON, C. T. WHITLEY, B. N. SYKES, J. M. ELEY AND T. W. SEARS, CONSTITUTING AND COMPOSING THE BOARD OF COMMISSIONERS OF HERTFORD COUNTY; JOHN A. NORTHCOTT, COUNTY ACCOUNTANT OF SAID HERTFORD COUNTY

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

Opinion of the Court Below.

The opinion of the Supreme Court of North Carolina, filed June 30, 1936, appears on page 13 of the record, and is reported in the Advance Sheets of N. C. Reports, Volume 210, page 352, 186 S. E. 504.

The North Carolina Supreme Court affirmed the judgment of the Superior Court of Hertford County dated April 4, 1936, appearing at page 12 of the record, which held that

deposits in bank by petitioner, guardian of a World War Veteran, of compensation and insurance funds, are subject to taxation by county and municipal authorities, and adjudged that petitioner recover nothing.

Within 40 days thereafter, and in apt time, petitioner filed in the said Supreme Court his petition to rehear the controversy, which was denied by the court on September 1, 1936, and the judgment in said court became final on September 1st, 1936.

This Court Has Jurisdiction.

First. The power and authority of the United States Supreme Court to review the final judgment of the North Carolina Supreme Court, in the instant case, is clear. Title 28 U. S. Code, Section 344 (b).

Ward v. *Love County,* 253 U. S. 17.

In that case it was held that where allotments belonging to Indians of Oklahoma which were made exempt from taxation by Federal laws, were assessed by county officials, and in consequence of demands by such officials, the Indians paid the taxes under protest, and thereafter brought suits to recover the amounts so paid, the U. S. Supreme Court had jurisdiction to review a judgment of the State court, the effect of which was to deny a Federal right.

Second. The right of the petitioner takes its origin in the laws of the United States, and involves a controversy respecting the construction and effect of such laws in order to determine such right. It presents a Federal question.

Savings Bank v. *Archibold,* 104 U. S. 708.

In this case the plaintiff sued to recover the amount of certain taxes collected by defendant, the determination of which depended upon the construction of a Federal statute containing certain exemptions.

Third. On August 10, 1936, petitioner filed in the Supreme Court of North Carolina a petition to rehear, which was denied by that court September 1st, 1936. The period of three months allowed to petitioner to apply for certiorari commences from September 1st, 1936.

Citizens Bank v. *Opperman*, 249 U. S. 448.

In that case the court held that the power of this Court to review judgments or decrees in State courts upon writs or error, or by certiorari, wherein is drawn in question the validity of a statute, or an authority exercised under any statute on the ground of their being repugnant to the Constitution treaties or laws of the United States, that the judgment does not become final in the State Court, where a petition for rehearing was filed, until such petition has been denied or otherwise disposed of, and the three months limitation begins to run from the date of such denial or other disposition.

Statement.

A statement of the material and essential facts is set out in the Petition (pages 2 to 6 hereof) and in the interest of brevity are not repeated but reference is hereby made thereto.

Assignments of Error.

It is respectfully insisted that the Supreme Court of North Carolina erred in holding that:

1. Compensation or insurance funds paid by the Federal Government to a World War veteran, or his guardian and deposited by him in bank to his credit, bearing no interest and subject to withdrawal by his checks without restriction, are taxable solvent credits, despite Section 454, Title 38, U. S. C. (43 Stat. 613).

2. The 1935 Act of Congress, Public No. 262, 74th Congress (H. R. 3979) (49 Stat. 607), approved August 12, 1935, is not applicable to the instant case.

3. The petitioner had no right to recover any part of the tax levied.

Upon each of these assignments of error, the following argument is submitted:

1. Compensation and insurance payments received by a guardian on behalf of a beneficiary and deposited in a bank are exempt from taxation by virtue of Section 22, World War Veterans' Act (Sec. 454, Title 38 U. S. C.)

Whether the funds in this case are exempt from taxation is dependent upon whether the Congress of the United States, in the exercise of its constitutional powers, has enacted legislation extending such exemption to compensation and insurance payments deposited in a bank. Logically it would seem pertinent first to inquire whether the statute relied upon may, or perhaps must, be so construed. This is a question of first impression, which has not been decided by this Court or indeed, so far as is known, by the court of last resort of any State other than in the instant case.

The question, of course, is not confined to the act of a guardian receiving checks from the Government in payment of compensation or insurance and depositing such checks or the proceeds thereof in a bank for safekeeping: for Section 22 if applicable applies as well to all beneficiaries *sui juris* who so deposit their war benefits. In short what is the effect of the law, and what is the intent thereof? While the Federal Government might tax war benefits paid a veteran, it seems clear that a State could not do so *as such*, since that would defeat the beneficial purpose of the grant. *McCulloch* v. *Maryland*, 4 Wheat. 316.

"The power to tax is the power to destroy". Hence the purpose of Section 22 must extend beyond a mere declaration of what the law was before its enactment: *i. e.*, it must contemplate that the funds themselves when received are exempt. The immunity created by Congress goes to the thing itself, that is to the funds derived from the payments, the actual proceeds of the checks issued, and not to the mere chose in action, or right to collect; to the substance, not the shadow.

When permanently invested they are not immune. *Trotter* v. *Tennessee*, 290 U. S. 354. The question was left open as to funds not invested.

Are funds invested within the purview of the above decision when they are deposited as in the instant case? A deposit of funds in a checking account, bearing no interest, is not an investment.

LaBelle Iron Works v. *U. S.*, 256 U. S. 388.

In that case it was said by this Court that " 'to invest' imports a laying out of money, or moneys worth, with a view to obtaining income or profit, and involving a conversion of wealth from one form into another suitable for employment in the making of the hoped-for-gains."

The question may be clearer if the later legislation be considered. Subsequent to the decision in the *Trotter* case, *supra*, the Congress enacted an Act approved August 12, 1935, entitled "An Act to safeguard the estates of veterans derived from payments of pensions, compensation, emergency officers' retirement pay and insurance, and for other purposes," in Section 3 of which it clarified its intention in respect to such exemptions by providing that—

> "Payments of benefits due or to become due shall not be assignable, and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation * * *

> either before or after receipt by the beneficiary. * * * nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments."

By Section 5 of this Act its provisions were extended to payments made theretofore under any of the acts mentioned in the 1935 Act, which include the payments made in the instant case.

The 1935 Act makes manifest the intention of Congress following the decision of the *Trotter* case, that when such funds lost the quality of money and became permanently invested, they likewise lost their tax immunity, but it is also apparent that until the moneys received were permanently converted into real or personal property, otherwise subject to taxation, the immunity remained. It is true the exception to the broad immunity is stated in the negative, but the maxim, "*expressio unius est exclusio alterius*" obtains.

From the above it must be concluded that the provisions of Sections 3 and 5, Public No. 262, 74th Congress are applicable to the facts of the instant case; if not in fact controlling they by virtue of the clearer expression of the Congressional intent are a guide to the proper construction of Section 22, World War-Veteran-' Act amended thereby. This would seem decisive of the question left open in the *Trotter* case.

2. So construed, such exemption provisions are constitutional and constitute the valid exercise of legislative power.

Here again the question seems to be one of first impression. This Court has held in *U. S.* v. *Hall,* 98 U. S. 343, that the United States "as the donor of the pensions, may through the Legislative Department of the Government annex such conditions to the donation as they see fit to insure its transmission unimpaired to the beneficiary. * * * Because the fund proceeds from the United States, and in-

asmuch as the donation is a voluntary gift, the Congress may pass laws for its protection, certainly until it passes into the hands of the beneficiary * * *. Compensation is likewise a donation, and the insurance in the instant case being term insurance partakes of the nature of a pension or gratuity. *White* v. *U. S.*, 270 U. S. 175; *U. S.* v. *Worley*, 281 U. S. 339. This is particularly apt in the instant case since the permanent and total disability benefits enjoyed by the veteran were not covered by the premium paid, but the cost thereof was assumed by the United States.

That the protection may extend beyond receipt of benefits by the beneficiary seems implied by the decision of this Court in the case of *Spicer* v. *Smith*, 288 U. S. 430, wherein the court said:

> "The provisions for exemption, not assignability and suspension of payments plainly imply the passage of title from the United States to the veteran. The denunciation of embezzlement by guardians is not inconsistent with that intention. These regulations, like many to be found in pension laws, disclose a purpose *to safeguard to beneficiaries the appropriations and payments made for their benefit* (United States *v.* Hall, 98 U. S. 343, 353. Westfall *v.* United States, 274 U. S. 256) and evince special solicitude for the protection of veterans who by reason of mental incompetency are unable to protect themselves * * *."

Indeed, the cases cited by this Court in the *Trotter* case, *supra*, with disapproval (*Rucker* v. *Merck*, 172 Ga. 793; *City of Atlanta* v. *Stokes*, 163 S. E. 270; *Payne* v. *Jordan*, 36 Ga. Apps. 787) proceeded on the theory that under its war-making power the Congress *has authority* to extend the exemption to property purchased by such funds. This Court decided the question on an entirely different basis, viz: that an intent so to do was not clearly expressed in the statute.

State exemption laws, both as to claims of creditors and as to taxation, have been sustained even as to pensions received and invested. See *Surace* v. *Danna*, 248 N. Y. 18, 161 N. E. 315; and *Manning* v. *Spry*, 121 Ia. 196, 96 N. W. 873.

The North Carolina Statute exempting from taxation pensions paid by either the State or Federal Government, Section 5168 (a. a.), North Carolina Code 1935 Ann., (quoted in full at page 23) has apparently not been construed, and was not applied to this case by the Supreme Court of that State.

The cases, while not decisive of the specific point, seem to leave little doubt th the exemption as to taxation may constitutionally be extended to the funds in the hands of the beneficiary or his guardian.

Summary.

It will, therefore, be seen that—

A. This Court has jurisdiction to review the judgment of the North Carolina Supreme Court in the instant case, because of the Federal questions presented.

B. The deposit of compensation or insurance payments in bank by a veteran, or his guardian, to his credit and subject to his withdrawal at his option, and bearing no interest, does not constitute taxable solvent credits or investments; and that such funds are exempt from taxation because of Section 454, Title 38 U. S. C. (43 Stat. 613).

C. The Act of Congress, approved August 12, 1935 (49 Stat. 607), has both prospective and retrospective effect, and applies retrospectively to the payments made to petitioner prior to the passage of the Act, and consequently to the action in this case, either directly or by way of clarification of legislative intent.

D. The Supreme Court of North Carolina erred in deciding this case to the contrary, and in holding that petitioner was not entitled to recover.

E. The said Supreme Court, in so deciding, deprived an incompetent veteran, and petitioner, of a right, privilege or immunity, granted or assured under an Act of Congress and the Federal Constitution, and should be reversed.

Conclusion.

It is respectfully submitted that this Court has jurisdiction of the subject matter of this action; that petitioner is entitled to appear and seek a review by this Court of the judgment below; that such judgment is erroneous; and in view of the importance of the question, and its wide application to many other cases of similar trusts, as well as in thousands of cases of veterans *sui juris*, this Court should grant the writ of certiorari as prayed herein, and construe the law applicable.

JOHN E. BENTON,
LLOYD J. LAWRENCE,
Attorneys for Petitioner.

APPENDIX.

Section 22, World War Veterans' Act (454 Title 38, U. S. C.) (43 Stat. 613).

"That the compensation, insurance, and maintenance and support allowance payable under Titles II, III, and IV, respectively, shall not be assignable; shall not be subject to the claims of creditors of any person to whom an award is made under Titles II, III, and IV; and shall be exempt from all taxation: Provided, That such compensation, insurance, and maintenance and support allowance shall be subject to any claims which the United States may have, under Titles II, III, IV, and V against the person on whose account the compensation, insurance, or maintenance and support allowance is payable.

"That the provisions of this section shall not be construed to prohibit the assignment by any person to whom converted insurance shall be payable under Title III of such Act of his interest in such insurance to any other member of the permitted class of beneficiaries."

Sections 3, 4 and 5, Public No. 262—74th Congress.

Approved August 12, 1935. (49 Stat. 607.)

SEC. 3. Payments of benefits due or to become due shall not be assignable and such payments made to, or on account of, a beneficiary under any of the laws relating to veterans shall be exempt from taxation, shall be exempt from the claims of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. Such provisions shall not attach to claims of the United States arising under such laws nor shall the exemption herein contained as to taxation extend to any property purchased in part or wholly out of such payments. Section 4747 of the Revised Statutes and section 22 of the World War Veterans' Act, 1924, are hereby repealed, and all other Acts inconsistent herewith are hereby modified accordingly. The provisions of this section shall not be

construed to prohibit the assignment by any person, to whom converted insurance shall be payable under Title III of the World War Veterans' Act, 1924, of his interest in such insurance to any other member of the permitted class of beneficiaries.

SEC. 4. If any provision, sentence, or clause of this Act or the application thereof to any person or circumstances, is held invalid, the remainder of this Act, and the application of such provision to other persons or circumstances, shall not be affected thereby.

SEC. 5. That this Act shall take effect and be in force from and after its passage, but the provisions hereof shall apply to payments made heretofore under any of the Acts mentioned herein.

Consolidated Statutes of North Carolina, Section 5168 (a. a.)

Exemption of Pensions or Compensations from Taxation.

Every person receiving a pension or compensation from the state, or United States, or any foreign country or government, for and on account of wounds or physical disabilities contracted or sustained during the late war between the United States and Germany, and any of the allied countries cooperating with the United States, shall not be required to pay any tax of any kind upon such pension or compensation, but the same shall be exempted from any and all taxes.

This section shall apply to all such taxes for the year one thousand nine hundred and twenty-three, and thereafter.